Our Case No. 10022/217

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	
	)	
G. Victor Guyan et al.	)	
	)	Examiner: Franel, Vanel
Serial No. 09/667,637	)	
	)	Group Art Unit No. 3626
Filing Date: September 22, 2000	)	
	)	
For LINE ITEM DATA PROCESSING	)	
	)	
	)	

APPEAL BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Appeal is in response to the Final Office Action mailed April 7, 2005[1].

I. REAL PARTY IN INTEREST

It is believed that Accenture L.L.P. is the real party of interest in this Appeal

pursuant to 1) a recorded assignment of the above-identified application to Andersen

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[1] Appellants are filing a Notice of Appeal concurrently with the filing of the present
Appeal Brief. Since the Notice of Appeal is being filed within three months of the
mailing date of the Final Office Action and the present Appeal Brief is being filed within
two months of the filing of the Notice of Appeal, the present Appeal Brief is timely filed.

Consulting executed by both of the inventors of record, G. Victor Guyan and Nicole K. Michaels and 2) a recorded assignment of the above-identified application to Accenture L.L.P. by Andersen Consulting.

II. RELATED APPEALS AND INTERFERENCES

The undersigned, John C. Freeman, is not aware of any other appeals, interferences or other judicial proceedings that may be related to, would directly affect or be directly affected by or have a bearing on the Board's decision in the pending Appeal.

III. STATUS OF CLAIMS

The status of the claims is as follows:

Claims 1-33 are finally rejected under 35 U.S.C. § 103(a) for being obvious in view of U.S. Patent Application Publication No. 2002/0072935 to Rowse et al. and U.S. Patent No. 4,899,292 to Montagna et al.

The above-mentioned rejection of claims 1-33 is the subject of this Appeal.

IV. STATUS OF AMENDMENTS

No Amendment or Response has been filed prior to the filing of the present Appeal Brief regarding the Final Office Action mailed on April 7, 2005.

V. SUMMARY OF CLAIMED SUBJECT MATTER

An understanding of the invention of independent claims 1, 12 and 23 can be made upon a review of the embodiments of the invention shown in FIGS. 1-11 of the specification. Note that in the description to follow, like elements will employ identical identification numerals.

FIG. 1 shows a computer network 100 that includes personal or workstation computers (such as computers 110 and 120) and system or enterprise computers (such as server 130, system 150, and system 140) (Page 6, lines 2-5). In general, personal computers or workstations are the sites at which a human user operates the computer to make requests for data from other computers or servers on the network (Page 6, lines 6-8).

Note that as used in the following description, the terms "client" and "server" are used to refer to a computer's general role as a requester of data (client) or provider of data (server).

A client, such as claimant client 110, may request information from insurance host server 130 (Page 6, lines 19-20). In this case, data from insurance host server 130 is transferred through the network 100 to claimant client 110 (Page 6, lines 20-21).

An insurance host server 130 maintains a database of claim folder information
(Page 7, lines 5-6). Claimant client 110 accesses insurance host server 130 to update,
enter, or review claim folder information (Page 7, lines 6-7). Claim handler client 120
accesses insurance host server 130 in order to review, evaluate, and/or fulfill claim
folder data (Page 7, lines 8-9). Vendor system 150 interconnects to insurance host
server 130 through network 100 in order to: receive order placement from insurance
host server 130; update database information to insurance host server 130; respond to
database access requests from insurance host server 130; and update or respond to
status information from insurance host server 130 (Page 7, lines 9-14). Insurance
back office system 140 interfaces to insurance host server 130 in order to: receive
check requests from insurance host server 130 and update insurance host server 130 as
to the status of checks cut from the system (Page 7, lines 14-16).

Fig. 2 shows a computer network containing an insurance host server 130 and
a claimant client 110 (Page 8, lines 1-2). In this example, a claimant client 110 is
interconnected through network 100 to the insurance host server 130 (Page 8, lines 2-
3). Claimant client 110 includes conventional components, such as processor 205 and
memory 215 (Page 8, lines 3-5).

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Insurance host server 130 includes conventional components, such as processor 235, memory 245, I/O controller 250, and network interface 260 (Page 8, lines 17-18). The processor 235, memory 245, I/O controller 250, and the network interface 260 are interconnected through a bus 240 (Page 8, lines 18-20).

In order to facilitate the understanding of processing insurance claims at the line item level, the claims folder hierarchy within which the line level resides is first discussed (Page 9, lines 14-16). Fig. 3 illustrates the hierarchy of the various levels within a claims folder (Page 9, lines 16-17). First, it is useful to define some terms. An insured is one who is insured by the policy; a claimant is one who is making a claim against the policy (Page 9, lines 17-18).

Claims folder 300 contains all of the policy information, information about the insured, and information about claims for a given client (Page 10, lines 3-4). Within a claims folder 300 are one or more policy levels 310 and 320 (Page 10, lines 4-5). The policy level 320 contains all the information relevant for a given policy (Page 10, lines 9-10).

Below policy level 320 is insured level 330 (Page 10, line 15). Insured level 330 contains all information relevant about the insured (Page 10, lines 15-16).

Below the insured level 330 is the claim level 340 (Page 11, line 3). The claim level 340 has general information about the claim raised against the policy (Page 11, lines 3-4). The claim level 340 may include the date of the claim, the nature of the claim, and general information relevant to the type of claim (Page 11, lines 4-6).

The claimant level 350 is below and within the claim level 340 and has full details about the claimant (Page 11, lines 9-10). Below and within the claimant level 350 is the line level 360 which details the various types of claimed damages levied by a particular claimant (Page 11, lines 18-19).

Systems and processes are operated at the line item level 370 within the line level 360 (Page 12, lines 1-2). The line item level 370 includes detailed line items, or line item data, for each claim against a particular line in the line level 360 (Page 12, lines 2-4). The line item data is stored within a line item database (Page 12, line 6). For a property loss claim, line item data fields include the type of property lost, the actual cash value, the replacement cash value, the amount paid for the item, whether the item was a gift or not, documentation for the item, and other information as it gets processed through the system of the present invention (Page 12, lines 7-11).

Fig. 4 illustrates three processes that run inside line item level 370 (Page 12, line 13). The capture line item data process 410 receives line item data entered by

claimant client 110 or claim handler client 120 into the line item database stored in

insurance host server 130 (Page 12, lines 14-16). The evaluation of line item data

process 420 presents line item data to a claim handler at claim handler client 120 and

authorizes the payment and processing of line item data (Page 12, lines 16-18). In

addition, the evaluation of line item data process 420 interfaces between insurance

host server 130 and insurance back office system 140 for determining what is covered

and the mode of indemnification (payment or vendor replacement) (Page 12, lines 18-

21). Fulfillment of line item data process 430 interfaces between insurance host

server 130 and vendor system 150 for vendor processing and for placing order with

vendors, updating database information from the vendor, accessing vendor database

information and performing status inquiries on placed vendor orders (Page 12, line 21

– Page 13, line 2).

Fig. 5 is a block diagram of the data interchange between insurance host server

130, claimant interface 500, vendor system 150, insurance back office system 140 and

claim handler interface 505 (Page 13, lines 4-6). Fig. 5 illustrates the flow of

information between the various clients and servers (Page 13, lines 7-8). A claimant

on claimant client 110 uses claimant interface 500 to access insurance host server 130

(Page 13, line 18-19). Once access from claimant interface 500 to insurance host

server 130 is granted, the claimant through claimant interface 500 may enter line items into the line item level database in insurance host server 130, and insurance host server 130 may present various queries to the claimant at claimant interface 500 to which the claimant gives responses (Page 14, lines 2-6). For instance, insurance host server 130 may ask claimant whether he wants a traditional paper check issued to fulfill losses or whether an electronic fund transfer is preferred to which the claimant answers (Page 14, lines 6-9).

Line item data is accessed by claim handler interface 505 from insurance host server 130, and evaluation information is exchanged between claim handler interface 505 and insurance host server 130 (Page 14, lines 14-16).

Insurance back office system 140 interfaces with insurance host server 130 (Page 14, line 17). The system 140's responsibilities include financial processing, for which one of the features is to issue payments (Page 14, lines 20-22). Insurance host server 130 in response to instructions from a claim handler operating from claim handler client 120 typically issues check requests to insurance back office system 140 (Page 14, line 22 – Page 15, line.1). In addition, check status information and confirmation is sent from insurance back office system 140 to insurance host server 130 (Page 15, lines 1-3).

Vendor system 150 interfaces to insurance host server 130 generally over network 100 (Page 15, lines 4-5). Insurance host server 130 may access the vendor database of line items supplied residing on vendor system 150 (Page 15, lines 6-7). Insurance host server 130 issues purchase order requests to vendor system 150, thus placing orders for the fulfillment of various line item data (Page 15, lines 10-12). In addition, the insurance host server 130 may issue preauthorized payment information to vendor system 150 (Page 15, lines 12-13).

Fig. 6 illustrates a flowchart of the capture line item data process 410 (Page 15, line 17). The capture line item data process 410 is generally initiated by a claimant operating on claimant client 110 (Page 15, lines 18-19). The process starts when a claimant elects (step 600) to be taken to an existing claim (Page 16, lines 3-4). When the process is started, the insurance host server 130 serves up a logon screen to claimant interface 500 (Page 16, lines 4-5).

If a claim number and password are a valid combination, various data from the policy level, insured level, claim level, claimant level, and line level is displayed in a web page served by insurance host server 130 to claimant interface 500 (step 608) (Page 16, lines 17-20).

The insurance host server can tunnel down through the item tree (step 616) (Page 18, lines 18-19). Stored on insurance host server 130 is a plurality of item trees (Page 18, lines 19-20). For each different type of insurance, there is a different item tree (Page 18, lines 20-21). The insurance host server 130 chooses the appropriate item tree based on the line and displays the top level of that tree in a web page to the claimant via claimant interface 500 (step 616) (Page 19, lines 6-8).

The claimant tunnels through the tree of line item data until he reaches the line item that he wishes to enter (step 618) (Page 19, lines 9-10). The claimant enters the line item data (step 620) (Page 19, lines 10-11). Line item data includes detailed information about the line item particular to that item (Page 19, lines 11-12). The line item data varies for each type of item (Page 20, lines 3-4). The line item data is used to update the line item level database residing in the insurance host server 130 (step 622) (Page 20, lines 4-5).

The claimant is able to edit specific line item level data by double clicking on that particular line item (step 636), thereby he or she is taken to the line item data entry screen and allowed to change various features of the line item data in the edit data block (step 640) (Page 20, lines 8-11).

Fig. 7 is a flowchart illustrating the evaluation of line item data process 420 (Page 20, lines 15-16). Once line item level data has been captured, the claim handler must begin the evaluation process (Page 20, lines 16-17). Claim handler interface 505 operates on claim handler client 120, which is connected to insurance host server 130 via network 100 (Page 20, lines 17-18). The evaluation of line item data is also known as settlement (Page 20, line 19). Initially, a claim handler operating claim handler client 120 logs onto the insurance host server 130 (step 700) (Page 20, lines 19-21). Once logged on, the claim handler tunnels down through the claims folder until he reaches the line item level for the particular policy/claim/claim level/line level of interest (Page 20, lines 21-23). Upon reaching the line item level, the line item database for that level is displayed (step 705) (Page 20, line 23 – Page 21, line 1). As mentioned earlier, the line item level database includes all information about each line item (Page 21, lines 1-2). The claim handler may exit the evaluation of line item data process (step 710) and, if so, proceeds to the evaluation of line item data process (step 715) (Page 21, lines 2-4).

If no item is double clicked, flow proceeds to where, if an item is selected (step 720), the claim handler is able to choose a payment type (step 740) (Page 21, lines 9-10). If no item is selected, the user has the option of issuing a direct payment (step

725) (Page 21, lines 10-11). If the user wishes to make a direct payment, the claim

handler enters an amount for direct payment (step 730) (Page 21, lines 11-13). Once

the amount is entered, payment processing commences (step 735) (Page 21, lines 17-

18). Insurance host server 130 communicates with insurance back office system 140

and directs insurance back office system 140 to issue payment to the claimant (step

730) (Page 21, lines 18-20). Payment may be in the form of a check or an electronic

fund transfer (Page 21, lines 20-21).

If an item is selected, the claim handler may choose one of three options (step

740): first, he may execute a vendor transfer (step 745); second, he may execute a line

item payment (step 750); and, third, he may execute a preauthorized payment (step

755) (Page 22, lines 3-7).

Fig. 8 illustrates a flowchart of the execute vendor transfer process 745 (Page

22, line 9). If while entering line item data (step 620), the claimant indicated that he

was amenable to a direct vendor transfer, the claim handler can arrange for fulfillment

of a line item data settlement by placing an order directly with a vendor (Page 22,

lines 9-12). An order processing screen is displayed allowing the claim handler to

interface with the insurance host server 130 (step 805) (Page 22, lines 12-14). The

selected line item level data appears on the screen (Page 22, lines 14-15). Next, the

insurance host server 130 cross-references the type of line item level data with the

vendor database and queries for a listing of authorized vendors for that particular type

of line item data (step 810) (Page 22, lines 15-17).

The claim handler selects a particular vendor based on the list of authorized

vendors previously displayed (step 820) (Page 22, lines 19-20). The claim handler

authorizes the vendor transfer (step 835) (Page 22, lines 4-5). When this authorization

takes place, the insurance host server is approved to place the order with the vendor

system 150 as further described in the fulfillment of line item data process 430 (Page

23, lines 5-7).

Fig. 9 is a flowchart of the line item payment process 750 (Page 23, line 9).

The payment processing window is displayed (step 900) (Page 23, lines 9-10). The

payment processing window displays the details on the particular line item data

selected (Page 23, lines 10-11). In addition, it displays whether a payment has already

been made for that item and the status of the item (Page 23, lines 11-13). The type of

payment is selected (step 915) (Page 23, line 17). The payment may be in terms of the

actual cash value (ACV) or the replacement cost (RC) (Page 23, lines 17-18).

Once the claim handler has added all items to this particular payment, the claim handler can choose whether a check or an electronic fund transfer takes place (step 920) (Page 23, lines 21-23).

Next, the claim handler approves the settlement (step 945) (Page 24, lines 13-14). Approval causes the insurance host server 130 to establish a payment through the insurance back office system 140, as will be discussed in the fulfillment of line item data process 430 (Page 24, lines 14-16).

Fig. 10 illustrates the execute preauthorized payment process 755 (Page 24, line 18). The preauthorization screen displays the claimant level information, a list of authorized vendors, a list of any excluded vendors, and other appropriate information (Page 24, lines 21-23). Next, the claim handler selects which authorized vendors are going to be preauthorized for the line's inventoried damages (step 1010) and, in addition, the claim handler indicates whether further authorization is required (step 1015) (Page 24, line 23 – Page 25, line 3).

The insurance host server 130 examines all entries in the line item level database for that line level and preauthorizes all line item level entries meeting the authorization criteria (Page 25, lines 18-20). When the fulfillment of line item data process 430 occurs, the line items preauthorized are placed in a purchase order sent

from the insurance host server 130 to vendor system 150 informing the vendors of the preauthorization (Page 25, lines 20-23).

Fig. 11 illustrates the processes within the fulfillment of line item data process 430 (Page 26, lines 2-3). The processes follow in three major groups: vendor database processes 1100; order placement processes 1105; and order tracking process 1110 (Page 26, lines 3-5). Vendor database processes 1100 include three processes: maintaining the preferred vendor database 1115; adding new vendors 1120; and upgrading vendors to preferred vendor status 1125 (Page 26, lines 5-7). All vendor information is maintained in a vendor database residing in the mass storage of insurance host server 130 (Page 26, lines 7-9). Vendor order placement process 1105 includes three processes: faxing or e-mailing the vendor the order 1130; placing the order on a web server for vendor access 1135; and placing the order by electronic data interchange 1140 (Page 26, lines 9-12).

The vendor database is accessed through the processes in vendor database processes 1100 (Page 26, lines 13-14). The add new vendor process 1120 allows a claim handler client 120 access to the vendor database on insurance host server 130 (Page 26, lines 14-15). Once the vendor is added to the system in process 1120, the

upgrade to preferred vendor process 1125 can be run to upgrade the vendor to preferred status (Page 27, lines 5-7).

Generally in the maintain vendor database process 1115, the claim handler or other person accesses the insurance host server 130 to update and maintain preferred vendor database information (Page 27, lines 10-12). The level of vendor relationship can range anywhere from poor, to average, to excellent or through gradations in between (Page 27, lines 15-16). In addition, the vendor's maintenance process 1115 also includes detailed listing of the vendor's products and services offered (Page 28, lines 4-5).

In process 1125, the claim handler may opt to upgrade the vendor to a preferred vendor (Page 28, lines 16-17). Preferred vendors are given preference when executing vendor transfers or preauthorized payment (Page 28, lines 17-18).

Process 1105 is dedicated to the placement of orders with vendors (Page 29, line 1). Orders may be placed by fax or e-mail to the vendor, as shown in procedure 1130 (Page 29, lines 2-3). If this option is selected, when the insurance host server 130 and insurance back office system 140 are directed by the execute vendor transfer 745 or execute preauthorized payment 755 processes to execute an order with the vendor, the order is placed by fax or e-mail to the vendor (Page 29, lines 5-8). The

vendor then replies either by e-mail or by telephone to confirm to the insurance back office system insurance host server combination that the order has been received (Page 29, lines 8-11).

Process 1135 shows that an order to a vendor may be placed on a web server at insurance host server 130 so that the vendor could logon from vendor system 150 in order to view a list of that day's currently placed orders (Page 29, lines 12-14).

The vendor system 150 interfaces to the insurance host server 130 by electronic data interchange or EDI so that orders can be placed directly between the insurance host server 130 and the vendor system without any manual interaction (Page 29, lines 17-20). In this method, when the execute vendor transfer 745 or the execute preauthorized payment 755 processes indicate that a vendor order should be placed, the insurance host server 130 communicates directly to vendor system 150 by way of EDI to directly place the order with the vendor system (Page 29, line 20 – Page 30, line 1).

Process 1110 order tracking is dedicated to updating the insurance host server from the vendor system on the status of all placed orders (Page 30, lines 4-5). The vendor system updates the insurance host server via electronic data interchange on the status of all currently placed orders (Page 30, lines 6-7). The vendor system indicates

whether such orders are fulfilled, placed, or pending (Page 30, lines 8-9). In addition, the vendor system 150 may indicate that a particular order is unable to be placed and, if so, notifies insurance host server 130 which then places the order with another vendor or, if that is not possible, send a message to the claim handler client 120 indicating that that line item is not able to be fulfilled via the vendor (Page 30, lines 9-14).

There are no means-plus-function terms or step-plus-function terms in independent claims 1, 12 and 23 and dependent claims 3, 4, 7, 14, 15, 18, 25, 26 and 29, which are argued separately below in Section VII.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

There is one ground of rejection presented for review:

1) the rejection of claims 1-33 for being obvious under 35 U.S.C. § 103(a) in view of Rowse et al. and Montagna et al.

VII. ARGUMENT

A. 35 U.S.C. § 103

1. Claims 1, 2, 12, 13 and 23, 24

Claims 1, 2, 12, 13, 23 and 24 were finally rejected in the Final Office Action of April 7, 2005 under 35 U.S.C. §103 as being obvious in view of Rowse et al. and

Montagna et al. Appellants traverse the rejection for several reasons. First,

independent claims 1, 12 and 23 each recites both "enabling the selection of a

payment type" and "fulfilling the payment of a line item based on the evaluation of

the line item data." Rowse et al. fails to disclose the recited "enabling" and

"fulfilling." The Final Office Action has conceded this. The Final Office Action has

relied on Montagna et al. to overcome the deficiencies of Rowse et al. Such reliance

is improper because Montagna et al. fails to disclose or suggest the recited "enabling"

and "fulfilling" processes. The Final Office Action relies on the passage at column

13, lines 7-68 of Montagna et al. cited in the Office Action mailed on July 6, 2004 as

disclosing both enabling the selection of a payment type and fulfilling the payment of

a line item on the evaluation of the line item data. The passage is given below:

> FIGS. 12(a) and (b) form a flow chart illustrating the operation of
> system 20 when programmed to implement an insurance estimation
> function. To begin, microprocessor 60 is programmed to display
> various menus stored in DRAM 72. In step 400, microprocessor 60
> displays a menu of system functions which includes, among others,
> the repair estimation function. After the display of this menu (and
> each of the subsequent menus described below), microprocessor 60
> waits for an interrupt resulting from a touch selection on screen 70.
> If the user selects this insurance estimation function, system 20
> displays a menu which includes the United States, Europe and Asia
> selections (step 402). Then system 20 displays a menu of
> manufacturers located within the selected continent such as General
> Motors, Ford and Chrysler located within the United States (404).
> Next, system 20 displays a menu of models produced by the

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selected manufacturer, such as the Reliant model manufactured by Plymouth (step 406). Next, system 20 displays a menu of body styles for the selected model such as "four door station wagon" (step 407) and then a menu of engine sizes (step 408). Thus, by steps 402, 404, 406, 407 and 408, the user with the aid of a hierarchical menu system, identifies the type of vehicle which was damaged. Next, microprocessor 60 addresses the corresponding document in CD-ROM 24 via bus 320 and reader 63 (step 409) which document includes text, data and graphics for estimating the cost of correcting damage to the selected vehicle. The text includes a worksheet 408 illustrated in FIG. 13 and described in more detail below. After the document is addressed, microprocessor 60 reads header information as noted above and then reads reference numerals imbedded in the document (step 410). The reference numerals identify the addresses of graphic images 448, 449 illustrated in FIGS. 14 and 15 and others within the document. Graphic image 448 is a general view of the vehicle illustrating various possible damage regions of the vehicle. The graphic image 450 is a view of one possible damage region of the vehicle, for example, the front sheet metal view. Next, microprocessor 60 directs decompression processor 96 to decompress the graphic images stored on CD-ROM 24 which are associated with the selected model (step 411). By way of example, there are approximately ten graphic images decompressed in step 411 out of approximately ten thousand stored in compressed form on CD-ROM 24.

Next, system 20 displays an administrative worksheet by which the user selects through the touch screen keyboard 500 and touch pad 74 the name and address of the owner, the insurer, if any, and other such information (step 412). Next, system 20 presents image 448 (step 414) and by means of touch pads 451-466, the user indicates the damaged region of the vehicle (step 415). This entry may be used solely for statistical purposes or may assist processor 60 in identifying a graphic image of the damaged areas. In either case, microprocessor 60 decodes interface 76 (step 416) and then displays menu 408 which lists different views of the vehicle which are

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available from DRAM 99 (step 413). After such display, microprocessor 60 waits for and decodes an interrupt indicating the selection. If the entry made in step 415 is used solely for statistical purposes, then the menu 408 lists all of the graphic images corresponding to the selected model. (Col. 13, ll. 7-68)

A review of the above passage reveals that it regards an insurance estimation function that estimates the cost of correcting damages to a vehicle (Col. 13, ll. 34-35). Nowhere does the passage disclose enabling the selection of a payment type. The remaining parts of Montagna et al. do not disclose enabling the selection of a payment type either. This is understandable since Montagna et al. merely discloses estimating the cost of correcting damages to a vehicle for an individual. Nowhere does Montagna et al. disclose enabling the selection of a payment type.

Montagna et al. also fails to disclose fulfilling a payment of a line item based on an evaluation of the line item data. The Final Office Action relies on the July 6, 2004 Office Action's citation of a passage ranging from column 13, line 7 to column 14, line 68 of Montagna et al. as disclosing fulfilling a payment of a line item based on an evaluation of a line item data. The passage is <u>silent</u> as to the fulfilling of a payment of a line item. Nowhere does Montagna et al. disclose fulfilling a payment of a line item. As mentioned above, Montagna et al. discloses estimating the cost for

correcting damage to a vehicle and is silent as to any payment being made based on such estimation.

Even if Montagna et al. did disclose "enabling the selection of a payment type" and "fulfilling the payment of a line item based on the evaluation of the line item data" the rejection would still be improper since there is no motivation to combine Montagna et al. with Rowse et al. In particular, Rowse et al. is directed to a system to determine whether or not an automobile warranty should be honored. Rowse et al. is not directed to determining the cost for repairing the defect. As is well known in the art, an automobile warranty identifies certain components of an automobile that should they be deemed to have failed to operate properly during the lifetime of the warranty, then such components would be replaced/fixed by the manufacturer <u>at no cost to the owner of the automobile</u>. Accordingly, if Rowse et al. determines that an automobile defect does fall within the warranty, then the manufacturer is held responsible to repair the defect and <u>the automobile owner does not have to pay for the repair in any way</u>. Since the automobile owner will not need to pay if the warranty applies, there is no need for Rowse et al. to employ either a process of enabling the selection of a payment type or fulfilling the payment of a line item as recited in claims 1, 12 and 23. Accordingly, Rowse et al. teaches away from using Montagna et al.'s

system, if it is deemed to enable the selection of a payment type and fulfilling payment of a line item.

It is noted that the Final Office Action has responded to Appellants' arguments above by pointing out at page 5 that:

> Montagna suggests "The user selects the desired operation. Next, system 20 displays a labor worksheet also stored in DRAM 72 which worksheet permits a user to enter the number of hours required to perform the repair, and any discount which is applicable to the repair (step 434). The data obtained from steps 426, 430, 432 and 434 is also stored in SRAM 78 for safety. Finally, either microprocessor 60 or the remote central computer 437 (FIG. 4) estimates the cost of repair based on the number of labor hours, discount, and the costs of the replacement parts" which correspond to Applicant (sic) claimed feature (See Montagna, Col. 14, lines 50-68).

The Final Office Action's reliance on the above passage is faulty to say the least. The passage is <u>silent</u> as to any payment being contemplated. All that is mentioned is determining the amount of hours for repair, any discount, and the cost of repair. Since there is no mention of payment and the Final Office Action is basing its rejection on the passage, there is no suggestion for altering Rowse et al. to either enable the selection of a payment type or fulfill a payment of a line item based on an evaluation of the line item data in view of Montagna. Accordingly, the rejection is improper and should be withdrawn.

It is noted that the Final Office Action has cited *In re Keller* for the proposition that nonobviousness cannot be shown by attacking references individually where the rejections are based on combinations of references. The Final Office Action has missed the point. Appellants are merely performing the analysis <u>required</u> under 35 U.S.C. § 103. In particular, 35 U.S.C. § 103 requires that "the differences between the subject matter sought to be patented and the prior art" be determined. In the present case, the analysis reveals that the Final Office Action has conceded that Rowse et al. does not disclose the claimed "enabling the selection of a payment type" and "fulfilling the payment of a line item based on the evaluation of the line item data." Second, as pointed out previously the remaining reference Montagna does not disclose "enabling the selection of a payment type" and "fulfilling the payment of a line item based on the evaluation of the line item data." So, it is clear that <u>both</u> references fail to disclose "enabling the selection of a payment type" and "fulfilling the payment of a line item based on the evaluation of the line item data." Thus, the differences between the claimed inventions and the art of Rowse et al and Montagna et al. are "enabling the selection of a payment type" and "fulfilling the payment of a line item based on the evaluation of the line item data." Pursuant to 35 U.S.C. § 103, claims 1, 12 and 23 can only be deemed unpatentable "if the differences between the

subject matter sought to be patented (claims 1, 12, 23) and the prior art (Rowse et al. and Montagna et al.) are such that the subject matter as a whole would have been obvious to a person having ordinary skill in the art to which said subject matter pertains" (parenthetical information added). Since neither Rowse et al. nor Montagna et al. discloses enabling selection of a payment type and fulfilling the payment of a line item based on the evaluation of the line item data, the only source left in our case for supplying the missing knowledge of "enabling the selection of a payment type" and "fulfilling the payment of a line item based on the evaluation of the line item data" is the person of ordinary skill in the art. However, such a person of ordinary skill should not be used to bridge gaps in the substantive presentation of the obviousness case. *Al-Site Corp. v. VSI Int'l, Inc.*, 174 F.3d 1308, 1324, 50 USPQ2d 1161, 1171 (Fed. Cir. 1999).

The Final Office Action further points out that obviousness is not determined by what the references expressly state but by what they would reasonably suggest to one of ordinary skill in the art. The Final Office Action asserts that Rowse et al. and Montagna et al. reasonably suggest altering Rowse et al. to enable the selection of a payment type and fulfilling the payment of a line item based on the evaluation of the line item data. This is not true. Rowse et al. does not reasonably suggest enabling

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selection of a payment type and fulfilling the payment of a line item based on the evaluation of the line item data since it is concerned with determining whether or not an auto owner's warranty covers damage of his or her vehicle (Paragraphs 0005 and 0007). One of ordinary skill would reasonably understand that enabling the selection of a payment type and fulfilling the payment of a line item based on the evaluation of the line item data is not of importance for determining whether or not an auto owner's warranty covers damage of his or her vehicle. What matters are 1) the damage incurred, 2) how the damage was incurred and 3) whether the warranty applies pursuant to items 1) and 2) above.

Montagna et al. also does not reasonably suggest enabling selection of a payment type and fulfilling the payment of a line item based on the evaluation of the line item data since it is concerned with a computerized system that allows for estimating the costs of repairs so that an estimate for an insurance company can be generated (Col. 1, ll. 16-18 and Col. 2, ll. 44-46). Montagna et al is silent regarding money exchanging hands regarding repair of damage covered by the estimate. Again, there is no need to select a payment type and fulfill payment of a line item based on an evaluation of the line item data since no payment are involved in the process.

Since there is no reasonable suggestion in Rowse et al. and Montagna et al., taken as a whole, to alter Rowse et al. to enable selection of a payment type and fulfill a payment of a line item based on an evaluation of the line item data, the rejection is improper. Not even the logic and sound scientific reasoning of one of ordinary skill[2] would suggest altering Rowse et al. to enable selection of a payment type and fulfilling a payment of a line item based on an evaluation of the line item data, the rejection is improper. If anything, the above arguments demonstrate that the only basis for the rejection is improper hindsight and Appellants' own specification which is forbidden. *In re Dow Chem. Co.*, 837 F.2d 469, 473, 5 USPQ2d 1529, 1532 (Fed. Cir. 1988).

For the above reasons, the rejections of claims 1, 12 and 23 are improper and should be withdrawn. Claims 2, 13 and 24 depend directly on claims 1, 12 and 23, respectively, and so their rejections should be withdrawn for the same reasons stated above with respect to claims 1, 12 and 23.

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[2] The reliance on logic and sound scientific reasoning of one of ordinary skill is not the standard to be applied pursuant to 35 U.S.C. § 103. *See, Panduit Corp. v. Dennison Mfg. Co.*, 774 F.2d 1082, 1092, 227 USPQ 337, 343 (Fed. Cir. 1985), *vacated, remanded,* 475 U.S. 809 (1986).

2. Claims 3, 14 and 25

Claims 3, 14 and 25 were finally rejected in the Final Office Action of April 7, 2005 under 35 U.S.C. §103 as being obvious in view of Rowse et al. and Montagna et al. Appellants traverse the rejection for several reasons. First, claims 3, 14 and 25 depend directly on claims 1, 12 and 23, respectively, and so are patentable over Rowse et al. and Montagna et al. for at least the same reasons given above in Section VII.A.1 as to why claims 1, 12 and 23 are patentable over the references.

The rejection is improper for the additional reason that there is no motivation in either Rowse et al. or Montagna et al. to receive "authorization from the claim handler to execute payment of the selected line item, wherein said authorization is for a payment in a form comprising a direct payment, vendor transfer, line item payment, or preauthorized payment" as recited in claims 3, 14 and 25. Both Rowse et al. and Montagna et al. are silent as to authorizing execution of payment of any kind. The passage at columns 13 and 14 of Montagna et al. recited in the Office Action mailed on July 6, 2004 and relied on by the Final Office Action is certainly silent regarding such authorizing. As mentioned above in Section VII.A.1., Rowse et al. regards determining whether or not an auto owner's warranty covers damage of his or her vehicle (Paragraphs 0005 and 0007) and so authorizing an execution of payment is not

of importance for determining whether or not an auto owner's warranty covers damage of his or her vehicle.

Montagna et al. also does not reasonably suggest authorizing an execution of payment since it is concerned with a computerized system that allows for estimating the costs of repairs so that an estimate for an insurance company can be generated (Col. 1, ll. 16-18 and Col. 2, ll. 44-46).

Since Montagna et al. does not suggest altering Rowse et al. to authorize execution of payment, the rejection is improper and should be withdrawn.

3. Claims 4-6, 8-11, 15-17, 19-22, 26-28 and 30-33

Claims 4-6, 8-11, 15-17, 19-22, 26-28 and 30-33 were finally rejected in the Final Office Action of April 7, 2005 under 35 U.S.C. §103 as being obvious in view of Rowse et al. and Montagna et al. Appellants traverse the rejection for several reasons. First, claims 4-6, 8-11, 15-17, 19-22, 26-28 and 30-33 depend directly or indirectly on claims 1, 12 or 23 and so are patentable over Rowse et al. and Montagna et al. for at least the same reasons given above in Section VII.A.1 as to why claims 1, 12 and 23 are patentable over the references.

The rejection is improper for the additional reason that there is no motivation in either Rowse et al. or Montagna et al. to maintain a vendor database as recited in

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claims 4, 15 and 26. Both Rowse et al. and Montagna et al. are silent as to maintaining a vendor database. The passage at paragraphs 0042-0046 of Rowse et al. cited in the Office Action mailed on July 6, 2004 and relied on by the Final Office Action is silent regarding maintaining a vendor database. Rowse et al. also does not reasonably suggest authorizing maintaining a vendor database since it is concerned with determining whether or not an auto owner's warranty covers damage of his or her vehicle (Paragraphs 0005 and 0007). One of ordinary skill would reasonably understand that maintaining a vendor database would not be needed for determining whether or not an auto owner's warranty covers damage of his or her vehicle. Such determining concentrates on the vehicle damage, the circumstances that resulted in the damage and the terms of the warranty. Accordingly, there is no need to maintain a vendor database in Rowse et al.'s process.

Since Montagna et al. does not suggest altering Rowse et al. to maintain a vendor database, the rejections of claims 4, 15 and 26 are improper and should be withdrawn. Claims 5, 6, 8-11, 16, 17, 19-22, 27, 28 and 30-33 depend directly on either claim 4, 15 or 26 and so their rejections should be withdrawn for the same reasons stated above with respect to claims 4, 15 and 26.

4.   Claims 7, 18 and 29

Claims 7, 18 and 29 were finally rejected in the Final Office Action of April 7, 2005 under 35 U.S.C. §103 as being obvious in view of Rowse et al. and Montagna et al. Appellants traverse the rejection for several reasons. First, claims 7, 18 and 29 depend indirectly on claims 1, 12 and 23, respectively, and indirectly on claims 4, 15 and 26, respectively, and so are patentable over Rowse et al. and Montagna et al. for at least the same reasons given above in Sections VII.A.1 and 3 as to why claims 1, 4, 12, 15, 23 and 26 are patentable over the references.
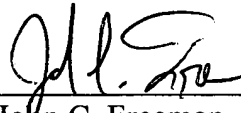
The rejection is improper for the additional reason that there is no motivation in either Rowse et al. or Montagna et al. to upgrade a vendor to a preferred vendor in the vendor database as recited in claims 7, 18 and 29. Both Rowse et al. and Montagna et al. are silent as to upgrading a vendor to a preferred vendor in the vendor database. The passage at paragraphs 0079-0086 of Rowse et al. cited in the Office Action mailed on July 6, 2004 and relied on by the Final Office Action is silent regarding upgrading a vendor to a preferred vendor in a vendor database. Rowse et al. also does not reasonably suggest authorizing upgrading a vendor in a vendor database since it is concerned with determining whether or not an auto owner's warranty covers damage of his or her vehicle (Paragraphs 0005 and 0007). One of ordinary skill

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would reasonably understand that upgrading a vendor in a vendor database would not be needed for determining whether or not an auto owner's warranty covers damage of his or her vehicle. Such determining concentrates on the vehicle damage, the circumstances that resulted in the damage and the terms of the warranty. Accordingly, there is <u>no need</u> to upgrade a vendor in a vendor database in Rowse et al.'s process.

Since Montagna et al. does not suggest altering Rowse et al. to upgrade a vendor to a preferred vendor in a vendor database, the rejection is improper and should be withdrawn.

For the reasons give above, Appellants respectfully submit that the rejections should be withdrawn and the claims should be allowed.

Respectfully submitted,

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VIII. CLAIMS APPENDIX

1.   A method for capture, evaluation and fulfillment of line item level data, the method comprising steps performed by a data processing system, of:

capturing at least one line item data in an insurance host server;

evaluating the line item data during the processing of an insurance claim;

enabling the selection of a payment type; and

fulfilling the payment of a line item based on the evaluation of the line item data.

2.   The method of claim 1 wherein the step of capturing comprises the steps of:

receiving claim identification information from a claimant, said claim identification information comprising, at least, one line level;

providing a client with an item tree of line item level data based on the line level and aggregating line item level data collected from the claimant; and

storing the line item level data in the insurance host server.

3.   The method of claim 1 wherein the stop of evaluating the line item data comprises the steps of:

displaying at least one line item from the insurance host server;

receiving a selection of at least one line item from a claim handler; and

receiving authorization from the claim handler to execute payment of the selected line item, wherein said authorization is for a payment in a form comprising a direct payment, vendor transfer, line item payment, or preauthorized payment.

4.   The method of claim 1 wherein the step of fulfilling comprises the steps of:

maintaining a vendor database on the insurance host server;

placing at least one order for at least one line item from the insurance host server to a vendor; and

tracking the order on the insurance host server.

5.   The method of claim 4 wherein the step of maintaining a vendor database further comprises the step of entering vendor information in the vendor database.

6. The method of claim 4 wherein the step of maintaining a vendor database further comprises the step of editing vendor information in the vendor database.

7. The method of claim 4 wherein the step of maintaining a vendor database further comprises the step of upgrading a vendor to a preferred vendor in the vendor database.

8. The method of claim 4 wherein the step of placing at least one order further comprises the step of faxing an order to a vendor.

9. The method of claim 4 wherein the step of placing at least one order further comprises the step of emailing an order to a vendor.

10. The method of claim 4 wherein the step of placing at least one order further comprises the step of placing an order on a web server for vendor access.

11. The method of claim 4 wherein the step of placing at least one order further comprises the step of placing an order with a vendor by electronic data interchange.

12.	A system for capturing line item data, comprising:

a processor for executing programs;

a memory for storing a program executable by the processor, the stored program including instructions for (i) capturing at least one line item data in an insurance host server, (ii) evaluating the line item data during the processing of an insurance claim; and (iii) fulfilling the payment of a line item based on the evaluation of the line item data; and

a user interface for enabling the selection of a payment type associated with said at least one line item.

13.	The system of claim 12 wherein capturing includes (i) receiving claim identification information from a claimant, said claim identification information comprising, at least, one line level; (ii) providing a client with an item tree of line item level data based on the line level and aggregating line item level data collected from the claimant; and (iii) storing the line item level data in the insurance host server.

14.	The method of claim 12 wherein evaluating the line item data includes (i) displaying at least one line item from the insurance host server; (ii) receiving a selection of at least one line item from a claim handler; and (iii) receiving authorization from the claim handler to execute payment of the selected line item,

wherein said authorization is for a payment in a form comprising a direct payment, vendor transfer, line item payment, or preauthorized payment.

15. The system of claim 12 wherein fulfilling includes (1) maintaining a vendor database on the insurance host server; (ii) placing at least one order for at least one line item from the insurance host server to a vendor; and (iii) tracking the order on the insurance host server.

16. The system of claim 15 wherein maintaining a vendor database includes entering vendor information in the vendor database.

17. The system of claim 15 wherein maintaining a vendor database further includes editing vendor information in the vendor database.

18. The system of claim 15 wherein maintaining a vendor database includes upgrading a vendor to a preferred vendor in the vendor database.

19 The system of claim 15 wherein placing at least one order includes faxing an order to a vendor.

20. The system of claim 15 wherein placing at least one order further includes emailing an order to a vendor.

21.   The system of claim 15 wherein placing at least one order further includes placing an order on a web server for vendor access.

22.   The system of claim 15 wherein placing at least one order includes placing an order with a vendor by electronic data interchange.

23.   A computer readable medium containing instructions for controlling a computer system to perform a method for capturing, evaluating, and fulfilling line item data, the method comprising:

capturing at least one line item data in an insurance host server;

evaluating the line item data during the processing of an insurance claim;

enabling the selection of a payment type; and

fulfilling the payment of a line item based on the evaluation of the line item data.

24.   The medium of claim 23 wherein the step of capturing comprises the steps of:

receiving claim identification information from a claimant, said identification information comprising, at least, one line level;

providing a client with an item tree of line item level data based on the line level and aggregating line item level data collected from the claimant; and

storing the line item level data in the insurance host server.

25. The medium of claim 23 wherein the step of evaluating the line item data comprises the steps of:

displaying at least one line item from the insurance host server;

receiving a selection of at least one line item from a claim handler; and

receiving authorization from the claim handler to execute payment of the selected line item, wherein said authorization is for a payment in a form comprising a direct payment, vendor transfer, line item payment, or preauthorized payment.

26. The medium of claim 23 wherein the step of fulfilling comprises the steps of:

maintaining a vendor database on the insurance host server;

placing at least one order for at least one line item from the insurance host server to a vendor; and

tracking the order on the insurance host server.

27.   The medium of claim 26 wherein the step of maintaining a vendor database further comprises the step of entering vendor information in the vendor database.

28.   The medium of claim 26 wherein the step of maintaining a vendor database further comprises the step of editing vendor information in the vendor database.

29.   The medium of claim 26 wherein the step of maintaining a vendor database further comprises the step of upgrading a vendor to a preferred vendor in the vendor database.

30.   The medium of claim 26 wherein the step of placing at least one order further comprises the step of faxing an order to a vendor.

31.   The medium of claim 26 wherein the step of placing at least one order further comprises the step of emailing an order to a vendor.

32.   The medium of claim 26 wherein the step of placing at least one order further comprises the step of placing an order on a web server for vendor access.

33. The medium of claim 26 wherein the step of placing at least one order further comprises the step of placing an order with a vendor by electronic data interchange.

IX.   EVIDENCE APPENDIX

None.

X.   **RELATED PROCEEDINGS APPENDIX**

None.